

**Town of Mount Desert Planning Board  
Regular Meeting Minutes  
Meeting Room, Town Hall  
6:00 PM, June 4, 2019**

**Public Present:**

James Peter Aylen, Judith Aylen, Janet Leston Clifford, Attorney for the Applicant Ed Bearor, Attorney for the Applicant Katie Foster, Laurie C. Shencavitz, Gerald Shencavitz, Judith Grant, Wallace Grant, Paul MacQuinn, Attorney for the Shencavitz' and Aylen's Daniel Pileggi, Jan Coates, H. Scott Stevens, Chris Rawls, Elizabeth Halpern, Janet Ellis, Leslie Edwards, Tim Beidel, Fran Leyman, Attorney for the Planning Board James W. J. Collier, Esq., Elizabeth S. Roberts, Seth Singleton, Kelly O'Neil, Maureen McGuire, Ellen Reynolds, Joanna Krasinsky, Pam Bowie, Keith Bowie, Steve Krasinski

**Board Members Present:**

Tracy Loftus Keller, David Ashmore, Joanne Eaton, Meredith Randolph, Chairman Bill Hanley, Christie Anastasia

- I. **Call to Order:** Chairman Hanley called the meeting to order. Board Members present were noted.

Continuation of meeting from April 18, 2019

II. **Quarrying License Application:**

**Public Hearing:**

**A. Quarrying License Permit #001-2014**

**OWNER(S):** Harold MacQuinn, Inc.

**OPERATOR(S):** Fresh Water Stone & Brickwork, Inc.

**AGENT(S):** Steven Salsbury, Herrick and Salsbury, Inc.

**LEGAL REPRESENTATION:** Edmond J. Bearor, Rudman Winchell

**LOCATION:** Off Crane Road, Hall Quarry

**TAX MAP:** 007 **LOT:** 075 **ZONE(S):** Residential 1 (R1)

**PURPOSE:** Quarry License Application – Section 6.2 Performance Standards for Existing Quarries – F. Buffering and Screening

Ms. Eaton confirmed adequate public notice. Abutters were notified.

No conflict of interest was found.

Chairman Hanley noted the Board would follow the protocol set at earlier meetings.

1 Attorney for the Planning Board James Collier made a statement regarding taking photos at  
2 site visits. He referred to the memo he sent to the Board. It is his determination that  
3 members of the public can make film and audio recordings of a site visit.  
4

5 Attorney for the Applicant Ed Bearor stated the Applicant's materials were submitted to the  
6 Board in advance. Additionally, they have had the chance to review submissions made by  
7 abutters and opponents. Agent Steve Salsbury was unable to attend the meeting.  
8

9 Attorney for the Shencavitz' and Ayles' Daniel Pileggi made note of the materials they have  
10 submitted. The photos submitted have been taken over a period of decades and show the  
11 growth of vegetation in the boundary areas of the quarry.  
12

13 Hall Quarry Resident Janet Leston Clifford stated she would make a presentation to the  
14 Board, using an aerial photograph/site plan overlay, as well as discussing requirements of  
15 what must be included on the site plan or marked on the ground, per Quarrying Licensing  
16 Ordinance stipulations. Further, Ms. Leston Clifford stated her objection to the April 18,  
17 2019 site visit as an illegal meeting. She referred to points made in her May 20, 2019  
18 written communication to the Board. Ms. Leston Clifford stated she submitted a transcript  
19 of an audio recording made at the site visit and referenced Chairman Hanley's notes taken  
20 during the site visit. Ms. Leston Clifford felt that the content of the conversation and  
21 substantive information provided during the site visit are pertinent to this meeting  
22 discussing Section 6.2.F Buffering and Screening, and to the future discussion of Section  
23 6.2.J Noise. Ms. Leston Clifford restated her objection to the fact that the site visit was not  
24 advertised in the usual manner for the public and only verbally announced during the April 4  
25 2019 Planning Board Workshop session. Ms. Leston Clifford thanked Attorney Pileggi for  
26 registering his objection to the way the April 18, 2019 site visit was conducted and  
27 advertised. Ms. Leston Clifford thanked Attorney Pileggi for informing the Planning Board  
28 that this was in violation of Maine law.  
29

30 Attorney Bearor stated that Section 6.2.F, Buffering and Screening, of the Quarrying  
31 Licensing Ordinance Application requires that *"The owner or operator of the quarry shall  
32 provide and/or maintain effective year-round visual screening of quarry operations. In those  
33 areas where fully effective visual screening is not feasible, the owner or operator shall make  
34 every reasonable effort, through screening, to minimize the visual impact of quarry activities  
35 to the neighbors. The design for such screening/buffering shall utilize existing land contours,  
36 artificially created berms, natural vegetation on site and plant material not presently on site,  
37 permanent fencing, walls or other techniques. All of the above shall be supplied and  
38 maintained by the owner or operator. The following provisions also apply."*  
39

40 Attorney Bearor deemed Section 6.2.F.1, Buffering and Screening (Protected Natural  
41 Resources), was not applicable.  
42

43 Section 6.2.F.2, Buffering and Screening New, reads *"quarrying operations shall not be  
44 permitted within fifty (50) feet, horizontal distance, of any property line without written*

1 *permission of the owner of such adjacent property. Any existing operation which is located*  
2 *less than 50 feet from the property line shall not be located any closer to any existing*  
3 *location without written permission from the adjacent property owner.”*  
4

5 Attorney Bearor commented on the site visit. He clarified that the Town never prevented  
6 anyone from taking photographs. Any prevention of such activity was solely at Attorney  
7 Bearor’s urging and not a Town Planning Board Member or Town Official.  
8

9 Attorney Bearor pointed out the edge of the proposed quarry operation shown on a site  
10 plan. Lines show the approximate location as of 2015 and extraction occurring at that time.  
11 At the North end of the property, bordering the property owned by the Aylens, the plan  
12 shows both the fifty-foot setback and a twenty-five-foot setback. The Applicant states  
13 vegetative cover has been removed from bedrock up to twenty-five feet of the Aylens’  
14 property. The hatched area on the plan represented the berm proposed. The berm would  
15 be ten to fifteen feet in width and five feet tall, with trees planted on top.  
16

17 Attorney Bearor reiterated that the bedrock has been exposed in the area by Harold  
18 MacQuinn Inc., in conjunction with the then-owners of the property. The area in question  
19 ran in a straight line. Attorney Bearor felt the straight line was indicative of man-made  
20 clearing. Mr. Bearor agreed there were trees growing in the area. One of the trees was cut  
21 in 2015 to determine its age. The tree appears to have been 20 years old at the time it was  
22 cut. The trees grew up after the area had been cleared in the 1970s. Vegetation and other  
23 material cleared from the area was piled in another part of the site.  
24

25 Attorney Bearor contended that the work was done in the 1970s. A 1967 aerial photograph  
26 submitted by Attorney Pileggi shows setback areas denoted by a red line. A green property  
27 line runs through the photo. The setback area in the photo appears to be vegetated.  
28 Attorney Bearor then referred to a 1985 image submitted by Attorney Pileggi. The 1985  
29 image also shows the green property line and the red setback lines. The image clearly  
30 shows the area has been cleared to a greater extent compared to the 1967 aerial photo.  
31 Attorney Bearor concluded the area had been cleared at some point between 1967 and  
32 1985. Attorney Bearor referred to a photo dated 2005. He pointed out the same cleared  
33 area showing tree growth occurring. Attorney Bearor reiterated that the biggest tree in that  
34 area was cut in 2015, and per the ring count, appears to be approximately 20 years old.  
35

36 Attorney Bearor contended that the 50-foot setback requirement stated in the Quarrying  
37 Licensing Ordinance is not applicable to the Applicant because Section 6.2.F.2 of the  
38 Quarrying Licensing Ordinance states *“quarrying operations shall not be permitted within*  
39 *fifty (50) feet, horizontal distance, of any property line without written permission of the*  
40 *owner of such adjacent property. Any existing operation which is located less than 50 feet*  
41 *from the property line shall not be located any closer to any existing location without written*  
42 *permission from the adjacent property owner.”* The courts concluded in October 2018 that  
43 the area in question is an existing operation. It is the Applicant’s contention that in  
44 evaluating the setbacks as applied to the Application the Applicant is entitled to maintain

1 any existing operation located less than 50 feet from the property line but may go no closer.  
2 The court determined the quarry is an existing operation, deemed an active unlicensed  
3 operation. The Quarrying Licensing Ordinance offers a definition of an active extraction  
4 area: *“The quarry itself, the actual hole in the ground, including side slopes and adjoining*  
5 *areas with overburden removed, excluding roads, structures, stockpiles, etc., which is being*  
6 *worked to produce stone and/or that is yet to be reclaimed.”* Attorney Bearor reiterated  
7 that “adjoining areas with overburden removed” is considered to be active extraction area.  
8 Attorney Bearor further reiterated the testimony of Applicant Paul MacQuinn as having  
9 removed overburden in the 1970s and the fact that the straight line denotes man-made  
10 removal. The Applicant is entitled to go to the edge of the area already cleared.

11  
12 Mr. MacQuinn testified to the removal of the overburden in the 1970s. He asserted that in  
13 the late 1970s he worked in the quarry making mooring stones and recalled the operation  
14 removing and stockpiling overburden. On January 7, 2015 Mr. MacQuinn affirmed he  
15 removed a tree from the North end of the quarry area near the Aylen property line to help  
16 determine age of the area. He cut one of the biggest trees in that area. Mr. MacQuinn  
17 provided a piece of the tree trunk to show the rings. He estimated there to be  
18 approximately 18 - 22 rings.

19  
20 Regarding the proposed berm, as the Ordinance requires the berm to provide a visual  
21 buffer. Attorney Bearor reiterated the berm would be at least five feet high, between ten  
22 and fifteen feet wide, and would have trees on top of it. The quarry side of the area is  
23 lower; the berm will be on higher ground, making the area five feet higher still. Attorney  
24 Bearor opined the berm should help attenuate noise from the quarry as well. It was felt the  
25 berm and planted trees will meet the Ordinance’s standards of a visual buffer. Attorney  
26 Bearor reviewed Quarrying Licensing Ordinance Standard 6.2.F, Buffering and Screening;  
27 *“The owner or operator of the quarry shall provide and/or maintain effective year-round*  
28 *visual screening of quarry operations. In those areas where fully effective visual screening is*  
29 *not feasible, the owner or operator shall make every reasonable effort, through screening, to*  
30 *minimize the visual impact of quarry activities to the neighbors. The design for such*  
31 *screening/buffering shall utilize existing land contours, artificially created berms, natural*  
32 *vegetation on site and plant material not presently on site, permanent fencing, walls or*  
33 *other techniques.”* Attorney Bearor stated the plan presented in the Application will provide  
34 an effective visual buffer per stipulations of the ordinance, which is all it’s intended to do.  
35 Additionally, it should attenuate noise as well.

36  
37 Attorney Collier brought up “Doctrine of Diminishing Assets”. Mr. Collier cited the 2004  
38 case, Town of Levant vs. Seymour, elucidating that the case of Town of Levant vs. Seymour  
39 concerned a gravel pit in which the owner stated that his intent was to dig in another place,  
40 and therefore the setback should be modified to accommodate that intent. The Court  
41 analyzed the question of whether intent to dig, and preparation of the land to dig was  
42 enough to consider it part of the active dig site. The Court decided not to adopt the  
43 principle in this case. Attorney Collier asked whether the Doctrine of Diminishing Assets had  
44 been adopted and if it had been adopted, would it be applicable to quarries? Attorney

1 Collier opined that this question was at the heart of the issue at hand. Attorney Bearor  
2 promised to supply a memo with his findings. His recollection was that the ordinance in  
3 question did not have the same type of anticipation of having cleared land. The Quarrying  
4 Licensing Ordinance states that the setback is 50 feet unless overburden has been cleared.  
5

6 Attorney Pileggi stated that the Law Court has never adopted or applied to land use the  
7 Doctrine of Diminishing Assets.  
8

9 Attorney Pileggi stated that until this meeting there has been no evidence submitted  
10 supporting the clearing of land behind the 50-foot setback line and boundary line. There is  
11 no written documentation from the previous owner, no affidavits, photographs, video, or  
12 other evidence of the area in question being stripped of overburden for quarrying.  
13

14 Attorney Pileggi reminded the Board that the first application iteration for this project was  
15 for a much larger area. State Mining Regulations supersede the Mount Desert Ordinance for  
16 all quarries over an acre in size. Evidence was obtained by the Town from the DEP showing  
17 a 1.1 acre site that did not include the setback areas now included in the application.  
18 Attorney Pileggi contended this was important because the State determined the setback  
19 area in question was not active quarry or existing operation. Previous statements made by  
20 the Applicant indicate the land was not quarried for decades. The buffer area has been  
21 reforested and lichens are growing on the exposed rock on the land along the Aylen and  
22 Coates property. There is no evidence and there are no grounds to extend the quarry to  
23 within the 50-foot setback, with the exception of two small sites where it's evident  
24 quarrying has occurred.  
25

26 Abutter Gerald Shencavitz referred to a binder of photos submitted to the Board that  
27 showed before and after of the site. Mr. Shencavitz asserted there was much more  
28 overburden in the area than the Applicant is alleging. In approximately 2015 Mr. Shencavitz  
29 stated that he heard chainsaws running in the quarry for approximately a week to two  
30 weeks, as well as machinery denoting scraping. On an early Sunday morning, the  
31 Shencavitz' visited the quarry and found that trees and overburden from the area had been  
32 removed. Mr. Shencavitz consulted a lichen expert who assessed that it takes upwards of  
33 40 years for the lichen on the rocks to grow to the size it is.  
34

35 Attorney Pileggi reminded the Board that the oddity of the Hall Quarry area and the zoning,  
36 results in an Application for an industrial use in the middle of a residentially-zoned area.  
37 The voters of the Town of Mount Desert imposed the setback area to keep the residential  
38 character of the area intact. Testimony received is that overburden was removed in the late  
39 1970s, during a time the Applicant did not own the property. Since that time, there's been  
40 no evidence of active quarry operation within the 50-foot setback. Evidence of the past  
41 several decades shows the setback area was not quarried or modified in preparation of  
42 quarrying.  
43

1 Mr. Shencavitz pointed out on the plan where he alleged the trees were cut. Attorney  
2 Bearor did not believe the area Mr. Shencavitz referred to was the area in question. Hall  
3 Quarry Resident Kelly O'Neil handed out pictures showing the area. Ms. O'Neil stated her  
4 pictures were received from the DEP. Mr. Shencavitz stated that tree stumps had been  
5 hauled from the site via dump truck.

6  
7 Mr. Shencavitz, with assistance from Ms. O'Neil, again pointed out the area of cutting and  
8 clearing he witnessed.

9  
10 Ms. Randolph noted that the Applicant is arguing that overburden was removed in the  
11 1970s. Was there any other situation where preparation for land use made decades prior  
12 would entitle the use so many years after the fact? The fact that an area requires trees to  
13 be removed and some overburden to be cleared prior to quarrying suggests the land is not  
14 active quarry area.

15  
16 Attorney Bearor clarified that the area has a few trees but no overburden to remove. Trees  
17 that have grown up in the interim do not count as overburden or complete regrowth. Ms.  
18 Randolph maintained that the trees are growing in overburden, and the vegetation in the  
19 area was plentiful. Attorney Bearor disagreed and asserted there was no overburden.

20  
21 Ms. Randolph felt the issue at hand was the existing quarry area. If the Applicant cleared  
22 area in the 1970s, then left the area completely alone, do they still have that right of intent  
23 decades later? Chairman Hanley felt Ms. Randolph's question was one of the first to be  
24 determined. He suggested allowing the presentations to move forward.

25  
26 Ms. Leston Clifford referred to her May 28, 2019 rebuttal submitted to the Board that  
27 included an aerial photograph with the site plan overlaid on it. The aerial photograph was  
28 taken via helicopter May 16, 2019. The overlay was created by Lark Studios in Bar Harbor.  
29 The purpose of the image is to provide perspective of what's on the ground. Ms. Leston  
30 Clifford noted that at the site visit there are no stakes in the ground, and no areas marked.  
31 Freshwater Stone representative Jeff Gammelin admitted at the site visit that he did not  
32 know where the one-acre quarry area was. Ms. Leston Clifford pointed out that the  
33 ordinance specifically requires the site to be staked on the ground.

34  
35 Ms. Leston Clifford summarized that previously the Applicant testified that they did not  
36 require a DEP permit. Members of the public contacted the DEP who then determined a  
37 permit was required, as the area in question was more than an acre in size. The Applicant  
38 then scaled back the quarry's size, resulting in the current site plan.

39  
40 Ms. Leston Clifford mentioned she had been having trouble determining where the  
41 reclaimed and un-reclaimed areas were on the Plan. Attorney Bearor stated the site plan  
42 before the Board only addressed the issue of buffering and screening. Other plans show  
43 different aspects of the operation. Attorney Bearor stated that the quarry area, as defined  
44 by the Quarrying Licensing Ordinance, is the one-acre area shown on the current plan.

1 Attorney Bearor did not feel that reclaimed and un-reclaimed areas were germane to the  
2 Quarrying Licensing Ordinance Review requirements, however he would be happy to point  
3 them out at a later time.

4  
5 Attorney Collier asked where on the Plan the location of the active operation was located, as  
6 of the effective date of the Quarrying Licensing Ordinance. Attorney Foster pointed out the  
7 black dotted line on the plan was the active quarry area as of the effective date of the  
8 Quarrying Licensing Ordinance.

9  
10 Ms. Leston Clifford stated that Article 6.1.D of the Quarrying Licensing Ordinance requires  
11 reclaimed and un-reclaimed areas to be marked on the site plan.

12  
13 Attorney Bearor countered that the items in question were not review standards. If they  
14 were left off the site plan, the Applicant would be happy to add them.

15  
16 Ms. Leston Clifford referred to the chart she presented. The chart included a table with one  
17 column of DEP language and requirements, and one column with Quarrying Licensing  
18 Ordinance language and requirements. In the Quarrying Licensing Ordinance column were  
19 the terms "footprint of the active extraction area", "footprint of the entire operation",  
20 "active extraction area or existing operation as court ordered from 2018". The court  
21 determined that the terms "footprint of the active extraction area" and "footprint of the  
22 entire operation" were synonymous.

23  
24 The Quarrying Licensing Ordinance has definitions. In Article 7, the definition of "footprint  
25 of operation" says "...outline (drawn on a plan and physically staked on the ground) around  
26 the approved active extraction area(s)". Ms. Leston Clifford restated that there were no  
27 stakes on the ground at the site visit. Members of the public asked where the extraction  
28 area was during the site visit. Additionally, Mr. Gammelin state he did not know where it  
29 was.

30  
31 Ms. Leston Clifford opined that the Planning Board owes it to the public to make sure the  
32 area is staked out on the ground per Quarrying Licensing Ordinance requirements. Further,  
33 the staked footprint of the operation must include the approved active extraction area, un-  
34 reclaimed area, stockpiles, all land upon which stumps, spoil or other solid waste, will be or  
35 has been deposited, and any storage area that will be or has been used in connection with  
36 the development, except a natural buffer strip.

37  
38 Ms. Leston Clifford reiterated there were no stakes delineating the quarry, nor was the area  
39 pointed out to the new Planning Board members.

40  
41 Ms. Leston Clifford suggested that, per the overlay she provided, the area in question is  
42 possibly larger than one acre in size. There appear to be areas outside the previously noted  
43 black dotted line that fall under the definitions of the DEP in how to calculate the size of the  
44 quarry. The DEP must first determine whether the area is a one-acre quarry or not. The

1 DEP accepted the amended site plan. However, the area has never been confirmed on the  
2 ground. The DEP notes that both reclaimed and un-reclaimed areas are added together in  
3 determining whether the one-acre threshold is exceeded.

4  
5 The DEP uses the terms “affected land” and “working pit”. “Working pit” is defined as the  
6 extraction area including overburden of an excavation for rock. This Plan does not include a  
7 stockpile.

8  
9 The Quarrying Licensing Ordinance states the site can have up to a three-acre threshold. Yet  
10 it includes a requirement of 50-foot setbacks. The DEP states that anything over one acre  
11 for a quarry requires a 100-foot setback.

12  
13 Ms. Leston Clifford referred to a DEP pamphlet she submitted to the Board entitled “Life in  
14 the Pits”. The pamphlet states under Performance Standards that a Notice of Intent to  
15 Comply for a permit should be filed for aggregate quarries of one acre or more, and it  
16 mentions a 100-foot road buffer, 50-foot property line. The pamphlet goes on to say that  
17 quarries must have a 100-foot buffer.

18  
19 Ms. Leston Clifford reiterated that the DEP requires size calculation to include more than  
20 just the extraction area. Article 6.2.A is a reminder that quarrying activities shall conform to  
21 all applicable state laws. The DEP falls under applicable state laws. DEP regulations for  
22 determining the size of the quarry must be used to determine the one-acre threshold. This  
23 determination must come first. Only after the quarry is deemed outside the one-acre  
24 threshold does the Quarrying Licensing Ordinance then apply. The DEP describes affected  
25 land as reclaimed and un-reclaimed.

26  
27 Ms. Leston Clifford stated that she has communicated with the DEP and the DEP is in  
28 possession of the plan she submitted to the Board. The DEP is actively looking at the site.  
29 Ms. Leston Clifford did not believe them to be done with their review at this time.

30  
31 Ms. Randolph agreed the DEP would have authority over the Planning Board. Ms. Leston  
32 Clifford agreed, but only if the quarry is determined to be over one acre in size. At the time  
33 of the DEP’s initial determination, they did not have an aerial photo, only a site plan. Ms.  
34 Leston Clifford included her email correspondence with the DEP in her submission.

35  
36 Chairman Hanley commended Ms. Leston Clifford’s aerial photo with site plan overlay. It  
37 was informative, and an image so far not seen by the Board.

38  
39 Attorney Bearor reminded the Board that on June 22, 2015, the DEP deemed the quarry less  
40 than one acre in size. If the DEP changes their mind, the Applicant will then work with the  
41 DEP, but for now the Applicant is before the Planning Board.

42  
43 Attorney Bearor inquired of Ms. Leston Clifford what control points were used for placing  
44 the overlay. Ms. Leston Clifford pointed out the red dots used by the landscape architecture



1 firm that created the overlay. The red dots are the outline of the Applicant's site plan.  
2 Attorney Bearor inquired about the small black squares, delineating structures, in the corner  
3 of the site plan. They appear not to be shown on the overlaid plan. There appeared to be a  
4 square placed in a different site. Attorney Pileggi noted that the Site Plan presented by the  
5 Applicant states the structures are approximately located. Ms. Leston Clifford provided the  
6 name and contact information for the firm who created the overlay and encouraged  
7 Attorney Bearor to discuss the technical aspects of the overlay with them.

8  
9 Attorney Bearor referenced the "footprint of operation", and Ms. Leston Clifford's concern  
10 regarding the lack of stakes in the ground. Ms. Leston Clifford restated that the Quarrying  
11 Licensing Ordinance states stakes in the ground are required. The Quarrying Licensing  
12 Ordinance was reviewed.

13  
14 Attorney Bearor referred to Article 6.1.D, Site Plan Submission Requirements. The Site Plan  
15 requirement in Section 6 was read: "*Footprint of the operation as of the effective date of the*  
16 *Ordinance including the active extraction area, all the areas with overburden removed,*  
17 *access routes and all reclaimed and un-reclaimed areas.*" Attorney Bearor pointed out there  
18 was no mention of stakes in this requirement. Ms. Leston Clifford referred to the definition  
19 of "Footprint of the Operation" in Article 7 that noted the area to be staked out.

20  
21 Attorney Bearor interpreted the Quarrying Licensing Ordinance to mean that once the  
22 approval is granted, the existing area would be staked out, so the Planning Board will know  
23 where the existing area is. The staked area can then be compared to the area three years  
24 from now when a renewal is applied for. Ms. Leston Clifford asked where in the Quarrying  
25 Licensing Ordinance it states that staking out the area does not occur until the after area is  
26 approved. The court referred to definitions, and definitions have played a major role in the  
27 process. Ms. Leston Clifford believed the court order also referred to the definitions in the  
28 Quarrying Licensing Ordinance.

29  
30 Attorney Bearor maintained there was no mention in the Site Plan Submission  
31 Requirements of staking the quarry area out. Ms. Leston Clifford countered that to  
32 understand what the footprint is one must refer to the definitions, which refers to stakes on  
33 the ground. Additionally, Ms. Leston Clifford felt that stakes on the ground at the site visit  
34 would have been helpful. Questions about the active site area could not be clearly  
35 answered because the area was not clearly marked.

36  
37 Ms. Randolph inquired if the area marked on the site plan within the heavy dotted line has  
38 been measured. Has it been found to be over an acre in size. Ms. Leston Clifford stated she  
39 has not measured the area. She is concerned that the visual may show it to be more than  
40 one acre, and has communicated her concern to the DEP.

41  
42 CEO Keene stated that Mark Stebbins sent the Town an email May 2, 2017, with the map he  
43 used, which was the 1967 aerial photo of the quarry.

44

1 Ms. Leston Clifford asked if the active extraction area being considered is the area as of the  
2 date of the adoption of the Quarrying Licensing Ordinance.

3  
4 CEO Keene agreed that per the DEP pamphlet Ms. Leston Clifford submitted to the Board,  
5 the requirements in quarry size calculation should include all reclaimed and un-reclaimed  
6 land, as well as any land that has been grubbed, stripped, and abraded even if mining has  
7 not commenced in those areas. Areas excavated prior to 1970 are exempt. Ms. Keene was  
8 unsure whether the DEP was exempting the overburden the Applicant is stating was  
9 removed in the 1970s.

10  
11 Chairman Hanley asked for any additional presentations.

12  
13 Hall Quarry resident Seth Singleton felt the Quarrying Licensing Ordinance was clear about  
14 the 50-foot setback area. He asked that if there was going to be an exception made to the  
15 rule, will the Planning Board also make exception for other kinds of previous activities in  
16 clear contradiction to the Quarrying Licensing Ordinance? Could an exception to the  
17 setback be a foot in the door for rendering other provisions as not having to apply if activity  
18 has occurred already. He added that he would have attended the last site visit, but he did  
19 not know about it.

20  
21 Chairman Hanley pointed out that the last site visit was the fourth or fifth site visit made to  
22 the property.

23  
24 Hall Quarry resident Kelly O'Neil stated she was a field scientist. She referred to the  
25 Northern portion of a previously submitted map of the area to the Board. She pointed out  
26 the area of exposed granite and compared it to another image. She pointed out the  
27 discrepancy of the trees; present on one aerial, missing in another aerial. She pointed out  
28 where on the map there had been quarry activity, and where the activity started. Quarry  
29 activity moved. She noted the quarry activity is not moving down, it is spreading out. Ms.  
30 O'Neil suggested that extra quarry debris had been used to fill in areas.

31  
32 Additionally, Ms. O'Neil brought photographs with her. Attorney Bearor objected to  
33 submissions being presented at the meeting and not within the previously agreed-upon  
34 submission deadlines.

35  
36 Attorney Collier summarized the agreed-upon submission rules were that a party would  
37 submit within enough time prior to the meeting to allow for other parties to react to the  
38 information submitted.

39  
40 Attorney Pileggi felt these pictures were an aid to Ms. O'Neil's testimony and not  
41 submissions in their own right. Attorney Collier disagreed.

42  
43 It was confirmed the pictures had been part of a timeline previously submitted to the  
44 Planning Board.

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Ms. O'Neil explained the pictures were aerial photos from 2008 and 2014. Ms. Leston Clifford confirmed that Ms. O'Neil's email with the pictures was included in the submission materials.

Attorney Collier argued that a standard had been set for submission deadlines. This is so other parties are aware the submission will be discussed and can prepare for discussion of the submission. Mr. Collier voiced concerned that everything submitted is construed as open for discussion.

Attorney Pileggi objected to the procedure and objected to the public being prevented from discussing materials submitted.

Attorney Collier stated the intent was that neither side be blindsided by a submission. No party should be unfairly treated.

Ms. O'Neil was allowed to proceed. Ms. O'Neil presented two photos to the Board. In the 2008 photo there were many trees shown. In comparison the 2014 photo shows less trees. Ms. O'Neil felt this was evidence of activity in the quarry unmonitored by either the Town or the DEP. Additionally, she pointed out granite in the 2008 picture that is not in the 2014 picture.

The pictures were small, and Ms. O'Neil proceeded to present a second time to ensure all Board Members saw the information. She took exception to Attorney Bearor's close presence during the presentations, who maintained he must see what was being presented each time.

Chairman Hanley interrupted the disagreement and requested Ms. O'Neil proceed.

Ms. O'Neil summarized that the photos show there was no activity in 2008. In 2014 there is activity, including a new structure. Ms. O'Neil stated she's asked several times for an independent party to look at the images. She opined that GIS could provide a lot of information regarding the quarry.

Ms. O'Neil cautioned that the pictures did not prove there was activity as far back as 2008, only that activity occurred at some point after 2008. Ms. O'Neil pointed out the change in topography further supports her claim. Ms. O'Neil added that in timeline materials she presented earlier one can zoom in to the pictures to capture more detail. She can provide a slideshow if requested to make flipping between the photos easier.

Chairman Hanley asked if there were any questions for Ms. O'Neil.

Ms. Anastasia asked Ms. O'Neil whether the slideshow has been changed or updated since it's initial upload. Ms. O'Neil stated it had not been changed.

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Attorney Bearor asked whether Ms. O’Neil had taken the 2008 and 20014 photographs she submitted. Ms. O’Neil had not taken the photographs. Attorney Bearor inquired when Ms. O’Neil moved to the Hall Quarry area. Ms. O’Neil inquired why such a question was relevant to the issue and refused to answer the question.

Attorney Bearor noted that the point of the submission was to show the Planning Board there had been activity in the quarry between 2008 and 2014. Ms. O’Neil clarified the point was to show that the quarry area is over an acre in size, and that the quarry is moving laterally. Attorney Bearor asked if Ms. O’Neil disputed the fact that activity has occurred on the property prior to 2014. Ms. O’Neil refused to answer the question, alleging it was leading.

Attorney Bearor protested to the Chairman. Those who testify must be prepared to be subject to questioning. Attorney Collier noted the hearing was not a court of law. He hoped civility could be upheld during the process. Chairman Hanley hoped all interested parties could work through the process and follow the protocol set.

Chairman Hanley asked for any other questions for the Presenter. There were none.

Chairman Hanley asked for further presentations from the public.

Quarry abutter Jan Coates showed where her home was in relation to the proposed quarry area on the overlay presented by Ms. Leston Clifford. Her home has been there since 1990. Additionally, land owned by her family has been in the area since 1970. Therefore, she has been in the area and observant of the area for many years. Per her letter submitted to the Board Ms. Coates insisted that the 50-foot setback must be acknowledged and enforced. Ms. Coates stated there has not been activity on the land within the setback area abutting her property. Ms. Coates reported an individual, Harold Borings, from the University of Maine came to the site to look at the lichen on the stone. The evidence he found suggests the land has not been disturbed. Ms. Coates contends that there is not sufficient evidence to indicate the area has been quarried or prepared for quarrying and should not result in a waiver of the 50-foot setback requirement.

Chairman Hanley asked for further questions of comments from the public. There were none.

Attorney Bearor agreed to make sure copies of the 6.1.D.5 and 5 submissions previously submitted were again provided to the Board.

Attorney Collier felt Sections 6.1.D.5 and 6 were of import to the Board. Attorney Collier read the section: “The Site Plan on the property that shall include the following:” Section 5 notes “*Location of the existing activities and structures on the property*”. Section 6 notes “*Footprint of the operation as of the effective date of the Ordinance, including the active*

1           *extraction area, all areas with overburden removed, access routes within the quarry, and all*  
2           *reclaimed and un-reclaimed areas.”* Attorney Collier felt that looking at the area as of the  
3           effective date of the Quarrying Licensing Ordinance – July 25, 2013 - was necessary to see  
4           what the area entailed.

5  
6           Discussion ensued regarding which site plan or map showed the required aspects of the  
7           area. Attorney Collier was looking for a map that shows the footprint of the operation as of  
8           the effective date of the Quarrying Licensing Ordinance, including the features listed in  
9           Section 6.1.D.5 and 6.

10  
11           CEO Keene reported that the Application submittal labeled SP3 was the plan showing the  
12           footprint of the operation, defined in Article 6.1.D.6.

13  
14           Attorney Collier felt that, with the number of maps submitted, common ground for  
15           discussion must be found. This would require the Applicant providing proof of the area they  
16           were operating at the time of the Quarrying Licensing Ordinance’s creation.

17  
18           Attorney Bearor requested the opportunity to provide the plan anew to the Board.

19  
20           Chairman Hanley noted there were six subsections of Section 6.2.F, Buffering and Screening  
21           to review. He noted that in the past, each subsection has been deliberated and voted on.  
22           Protocol has been to allow the Applicant and the public a chance to speak as the Board  
23           works through the subsections. It was agreed to continue to operate in the same manner  
24           moving forward. Those in attendance offered no dissension to operating in this protocol  
25           moving forward.

26  
27           Attorney Collier offered as another suggestion that the Applicant could present on all six  
28           subsection, followed by members of the public commenting on the subsections.

29  
30           Ms. Eaton and Ms. Anastasia noted that Section F has an initial paragraph that, while not  
31           numbered, appears to be an item to be voted on.

32  
33           The Board agreed to start their deliberation with the first paragraph.

34  
35           Attorney Bearor requested that Applicant Paul MacQuinn be allowed to rebut Mr.  
36           Shencavitz’ statements about the cutting of trees.

37  
38           Attorney Bearor asked that Mr. MacQuinn reply to Mr. Shencavitz’ testimony regarding the  
39           extent of the tree removal and where it was on the property.

40  
41           Mr. MacQuinn pointed out the area on the plan where trees were removed for a grout pile.  
42           He estimated the area to be a quarter of an acre in size. Undesired blocks are placed there.  
43           Mr. MacQuinn stated there was no cutting along the area near the abutters, other than the  
44           single log he cut as previously described. He noted there were no stumps that had been

1 pulled or earth removed from the area, nor sign of where these things might have  
2 happened. Mr. MacQuinn maintained the area in question is not a disturbed area. The  
3 trees there are growing out of cracks. Soil gets into the cracks, and trees like Red Pines will  
4 grow in such an environment. Mr. MacQuinn noted that if machinery were in the area, the  
5 lichen noted there would have been scraped off.

6  
7 Chairman Hanley reminded Attorney Bearor that rebuttals to presentations should occur at  
8 the time the presentation is being made.

9  
10 Mr. Ashmore asked for clarification that there was no sign of excavation occurring at the site  
11 in question. He asked Mr. MacQuinn to confirm the area he was referring to is the 25-foot  
12 setback area. Mr. MacQuinn pointed out the area he referred to on the map.

13  
14 Attorney Collier asked for clarification on Section 6.2.F.2. Was the Applicant's presentation  
15 on the Section and all its subsections over at this point? Chairman Hanley felt there would  
16 almost certainly be more discussion as the Board proceeded through the individual  
17 subsections. Chairman Hanley felt the understanding had been that discussion thus far was  
18 just initial presentation on the subject, with more specific presentation may ensue. Mr.  
19 Hanley noted the Board has tried to be as thorough as possible and avoided lumping  
20 reviews into a single general subject.

21  
22 Chairman Hanley noted that past protocol has also been to cut the meetings off at 9:00 pm.

23  
24 A review began of the first paragraph of Section 6.2.F. Chairman Hanley read the first  
25 paragraph: *"The owner or operator shall provide and/or maintain effective year-round visual  
26 screening of the quarry operations. In those areas where fully effective visual screening is  
27 not feasible, the owner or operator shall make every reasonable effort, through screening, to  
28 minimize the visual impact of quarry activities to the neighbors. The design for such  
29 screening/buffering shall utilize existing land contours, artificially created berms, natural  
30 vegetation on site and plant material not presently on site, permanent fencing, walls, or  
31 other techniques. All of the above shall be supplied and maintained by the owner or  
32 operator. The following provisions shall also apply:"*

33  
34 Ms. Eaton felt the statement in the Application refers to the subsection, and the issues are  
35 addressed in the subsection. Details of the berm and screening would be discussed in the  
36 Subsections.

37  
38 It was agreed the Board could proceed to Subsection 6.2.F.1. – Protected Natural Resources.  
39 Chairman Hanley read the Subsection: *"Unless authorized pursuant to the Natural  
40 Resources Protection Act, Title 38, M.R.S.A., Section 480-C no part of any quarrying  
41 operation, including drainage and runoff control features shall be permitted within one  
42 hundred (100) feet, horizontal distance, of normal high water line of a great pond, and  
43 within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other*

1            *water body, tributary stream, or the upland edge of a wetland. The Applicant must provide*  
2            *a sufficient benchmark on the property to indicate this setback.”*

3  
4            Ms. Eaton noted the Applicant marked this item as Not Applicable, she presumed because  
5            of the distance of the quarry to water. Chairman Hanley inquired of the Applicant why they  
6            felt the subsection did not apply to the Application.

7  
8            Attorney Bearor stated there are no protected natural resources within 100 feet of the  
9            planned buffer area. The rest of the standard was clearly addressed in the section  
10           addressing stormwater runoff. Attorney Bearor reminded the Board that the far  
11           Southwesterly end of the site is where water runs off and has been previously addressed.  
12           Regarding buffering and screening it is in no way within any distance of a natural protected  
13           resource.

14  
15           Attorney Dan Pileggi pointed out the Quarrying Licensing Ordinance does not delineate  
16           wetlands by size. The upland edge of a wetland is defined in the ordinance and includes  
17           technical information, including that the upland edge of a wetland has soils that are not  
18           saturated for durations to support wetlands vegetation or where soils support the growth of  
19           wetland vegetation. On the map, a wetland can be seen near the Shencavitz property.

20  
21           Chairman Hanley asked how the Town addresses wetland setbacks.

22  
23           CEO Keene reported there is a setback requirement for designated protected wetlands. A  
24           map of protected wetlands is on record. CEO Keene referred to a report from Lee Burman  
25           of the IF&W showing that there are no wetlands with protected status in the area. The  
26           wetland on the map is a forested wetland but does not meet the definition in the ordinance.  
27           Attorney Pileggi disagreed. The wetland does meet the definition in the Quarrying Licensing  
28           Ordinance. The Quarrying Licensing Ordinance, which the Court has directed to be the only  
29           thing that applies to the Application, defines “wetland” in broader, more general terms.  
30           Therefore, the wetland near the Shencavitz property applies to Quarrying Licensing  
31           Ordinance standards. A wetland setback must be applied to the wetland, based on the  
32           Quarrying Licensing Ordinance. The Board must take the plain language of the Quarrying  
33           Licensing Ordinance which does not refer to “protected wetlands” in conjunction with the  
34           issue of buffering.

35  
36           Attorney Collier inquired whether it was Attorney Pileggi’s contention that the wetland in  
37           question was ten or more contiguous acres. Attorney Pileggi pointed out that the wetland  
38           in question may not be ten or more contiguous acres, however the size provision does not  
39           apply per the Quarrying Licensing Ordinance. The Quarrying Licensing Ordinance does not  
40           include this definition. The Quarrying Licensing Ordinance refers to the upland edge of a  
41           wetland and does not state a size limitation.

42  
43           Chairman Hanley noted that in the past when the Board has encountered projects with  
44           wetlands delineated on properties they are commonly referred to the ten-acre size.

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Ms. Randolph cited the testimony of Alita Berman, a wetlands soils scientist.

CEO Keene reported that the forested wetland is five acres in size, and across the street from the site is a 2.2-acre wetland. Ms. O’Neil added that the two wetland areas used to be attached.

Chairman Hanley felt the question at hand was whether the wetland in question requires the 75-foot setback requirement. Ms. Randolph did not know whether the term “protected wetland” is used throughout the Quarrying Licensing Ordinance. Traditionally, the Board has discussed properties with wetland areas, but if the wetland wasn’t large enough it was not considered protected wetlands. Board members do recognize the importance of wetlands, however they are tasked to work within the definition of protected wetlands provided to them. The Board’s definition requires them to look at the 10-acre size. Chairman Hanley asked the Board members their thoughts on whether the wetland would require a setback or not.

Ms. Eaton felt that based on previous soils expert testimony, the wetland did not meet the standards requiring a setback. Mr. Ashmore argued that the Quarrying Licensing Ordinance defines wetlands as a freshwater coastal wetland without going into any size specifications.

Attorney Collier stated the definition of freshwater coastal wetland defines the term as having ten acres. Attorney Collier asked the Applicant what the distance from the berm area to the wetland was. Attorney Bearor pointed out the wetland area on the site plan. The berm would have to be moved if the wetland becomes an issue. The Applicant would have to submit a new plan showing the move. Attorney Bearor confirmed the proposed berm site is what is closest to the wetland. The proposed quarry area itself was estimated to be close to 75 feet from the wetland.

Attorney Bearor stated that if the wetland is deemed the type of wetland requiring protecting and if it’s within the required setback area, the Applicant will deal with the issue at that time.

Chairman Hanley asked if the Board felt they could reach a consensus on the type of wetland this was and if a setback is required for it.

Ms. Randolph was reminded of a recent subdivision change that came before the Board. The back half of the property was deemed wetland. That wetland was deemed not big enough to have special setback requirements. She wondered if the same rules for determination were in play. Chairman Hanley thought the usual rule was to determine if the wetland is a wetland of special significance or a protected wetland, as delineated on maps and on record within the Town. In the case of the subdivision discussed at an earlier meeting, the wetland was not deemed of special significance or protected. Chairman Hanley added the next tier of review to determine if the wetland in question was 10 acres or



1 more in size. In the case of the subdivision Ms. Randolph referenced, it was not. At that  
2 point, in the case of the Subdivision, the Board determined that additional setbacks were  
3 not necessary because of the size and determination.

4  
5 Chairman Hanley felt the Board's review of wetland status has been consistent over the  
6 years. The Board agreed.

7  
8 Hall Quarry Resident Maureen Maguire stated that her property, next to the Shencavitz  
9 property, also has areas of standing water. On their property they have a number of  
10 salamanders, deemed a protected species. They have been asked to document with the  
11 State of Maine sightings of these salamanders. Ms. Maguire noted the land is a vernal pool,  
12 but also a wetland where these salamanders live. In the context of the application, no  
13 vernal pools have been identified.

14  
15 Attorney Collier stated the definition was simple: nothing can be within a certain distance  
16 of a body of water, including a wetland. The Quarrying Licensing Ordinance's definition of  
17 freshwater wetland says *"Freshwater swamps, marshes, bogs and similar areas, other than  
18 forested wetlands, which are: 1. Of ten or more contiguous acres; or of less than 10  
19 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook,  
20 such that in a natural state, the combined surface area is in excess of 10 acres; and 2.  
21 Inundated or saturated by surface or ground water at a frequency and for duration sufficient  
22 to support, and which under normal circumstances do support, a prevalence of wetland  
23 vegetation typically adapted for life in saturated soils."*

24  
25 Attorney Collier opined that Number 2 of the Quarrying Licensing Ordinance definition of  
26 "Freshwater Wetland" requires determination from a specialist. Attorney Collier inquired of  
27 the Applicant whether at some point they delineated wetlands using these criteria.  
28 Attorney Bearor affirmed they had. Attorney Collier asked if the areas were shown on the  
29 submissions. Attorney Bearor affirmed they were. Attorney Collier asked whether the  
30 wetlands found were shown on the plan.

31  
32 Attorney Bearor affirmed they were and requested the Board review the wetland report  
33 submitted in the Application submission packet. S.W. Cole Engineering and Alita Berman did  
34 wetlands analysis of the area. Ms. Berman specifically addressed the wetland in the  
35 Northwest corner of the lot in her report of August 31, 2016. Ms. Berman's assessment  
36 states *"based on our review, the site is not subject to the 75-foot wetlands setback due to  
37 the wetland within and ending within 75 feet of the site being classified as a forested  
38 wetland, regardless of size of the wetland."* Ms. Berman is with Berman Land and Tree  
39 Company, LLC, and is a licensed professional forester and master arborist and master  
40 pesticide applicator, certified wetland scientist, certified soil scientist, and licensed site  
41 evaluator.

42  
43 Attorney Collier inquired whether any other parties have now or in the past submitted any  
44 reports covering the question at hand.

1  
2 Ms. O'Neil offered that she wrote a letter, however she is not certified. She felt it was  
3 unfortunate that the environment was not protected the way it should be. Ms. Maguire  
4 also wrote a letter. There has never been an official measurement of the wetland on her  
5 property but it connects to the wetland on the Shencavitz property. She estimated it could  
6 be ten acres or more.

7  
8 Chairman Hanley asked if there were any other reviews of the wetlands made by a certified  
9 wetlands scientist. None were mentioned.

10  
11 Ms. Eaton noted that Ms. Berman's report covered many issues. There was no reason to  
12 believe the report was anything but credible. Ms. Keller pointed out the report only  
13 discusses the subject site, and not adjacent lands. Ms. Randolph felt Ms. Berman would  
14 have to have considered the adjacent land in her review.

15  
16 Chairman Hanley asked that within the context of what has been submitted, and what has  
17 been currently reviewed under Section 6.2.F.1. Is the Board going to require a 75-foot  
18 setback from the wetland?

19  
20 Hall Quarry Resident Betsy Roberts submitted a letter to the Town dated approximately May  
21 21, 2019. She reminded the Board that in reading the Quarrying Licensing Ordinance, the  
22 purpose, in addition to respecting the rights of pre-existing operations, the quarry is an  
23 industrial operation in a residential area. The Quarrying Licensing Ordinance is intended to  
24 "*protect the public health, safety, and general welfare; and to minimize the adverse impact*  
25 *of quarrying to the Town, abutting property owners, citizens of the Town, wildlife and*  
26 *natural resources.*" Ms. Roberts hoped that as the Board debates the issue, they will be  
27 focused on this purpose.

28  
29 Ms. Roberts read more of the purpose as stated in the Ordinance, "*A. preserving and*  
30 *protecting surface and groundwater quality and quantity for current and future use of the*  
31 *Town and/or its residents. B. Preserving the Town's natural resources, property value, their*  
32 *future ability to be an asset to the Town and its residents. C. Controlling the amount of*  
33 *potential pollution which can be discharged into the Town's environment.*" Ms. Roberts  
34 noted pollution can also be sound, trucks, vibration or dust.

35  
36 MS. EATON MOVED, WITH MR. ASHMORE SECONDING, THE STANDARD DELINEATED IN  
37 QUARRY LICENSING ORDINANCE SECTION 6.2.F.1 IS NOT APPLICABLE AS THERE IS NO  
38 "WETLAND", AS THAT TERM IS DEFINED IN THE ORDINANCE OF THE QUARRYING LICENSING  
39 ORDINANCE, WITHIN 75 FEET OF ANY PART OF THE QUARRYING OPERATION. THE BOARD  
40 BASES ITS DECISION ON THE REPORT FROM THE APPLICANT'S CERTIFIED WETLANDS  
41 SCIENTIST. THAT THE WETLANDS SHOWN ON SP1 IS IN LARGE PART A FORESTED WETLAND.  
42 MOTION APPROVED 5-0-1 (KELLER IN ABSTENTION).

43

1 MS. ANASTASIA MOVED, WITH MS. EATON SECONDING, FOR A FIVE-MINUTE BREAK.  
2 MOTION APPROVED 5-0-1 (KELLER IN ABSTENTION).  
3

4 The Meeting recessed for a five-minute break.  
5

6 Section 6.2.F.2 was reviewed. Chairman Hanley read the section: *“Quarrying operations*  
7 *shall not be permitted within fifty (50) feet, horizontal distance, of any property line without*  
8 *written permission of the owner of such adjacent property. Any existing operation which is*  
9 *located less than fifty feet from the property line shall not be located any closer than the*  
10 *existing location without written permission from the adjacent property owner.”*  
11

12 Chairman Hanley reiterated that the court has determined the quarry to be an existing  
13 operation. The Applicant is proposing to be allowed to operate less than fifty feet from the  
14 property line.  
15

16 Attorney Collier stated that per the LUZO, and as a general principle of law, a lawfully pre-  
17 existing non-conformity cannot be prohibited from continuing their activity if they were  
18 deemed lawfully pre-existing when the ordinance went into effect. On the other hand, the  
19 Quarrying Licensing Ordinance requires a 50-foot setback.  
20

21 Attorney Collier referred to the definition of Active Extraction Area. The definition included  
22 *“The quarry itself, the actual hole in the ground, including side slopes and adjoining areas*  
23 *with overburden removed, excluding roads, structures, stockpiles, etc., which is being worked*  
24 *to produce stone and/or that is yet to be reclaimed.”* Attorney Collier stated that Attorney  
25 Bearor contended the existing location as defined is closer than the 50-foot setback  
26 requirement, in that a quarry operator cuts trees and removes overburden and then begins  
27 to quarry stone. The court can’t prohibit a quarry operator’s right to quarry after the quarry  
28 operator has spent time preparing the land for quarrying. The challenge is that if a previous  
29 owner removed the trees and overburden and cut stone decades ago, and years later  
30 another operator came in to continue the quarry and the area was cleared off – is there, at  
31 some point in time, a cutoff?  
32

33 Attorney Collier felt there were different ways to approach the question. One method to  
34 consider was to agree on a demarcation date to go by - to determine the quarry area size  
35 per the effective date of the Quarrying Licensing Ordinance, for example. The Applicant  
36 would be required to show the Board where they were quarrying as of the date of the  
37 Quarrying Licensing Ordinance. Attorney Collier felt using the effective date of the  
38 Quarrying Licensing Ordinance would be easier to defend in court. It would be the  
39 Applicant’s burden to prove the active quarry was within the setback at the time of the  
40 effective date of the Quarrying Licensing Ordinance. He noted others have disputed the  
41 Applicant’s assessment of where the active quarrying area was as of the date of the  
42 effective date of the Quarrying Licensing Ordinance.  
43

1 Chairman Hanley reviewed where the 50-foot setback line is on the plan. Attorney Collier  
2 noted Plan SP-3 should provide all requirements noted in 6.1.D.5 and 6, including location of  
3 existing activities and structures and footprint of the operation.  
4

5 Ms. Randolph noted that arguments have been made that the Applicant was working within  
6 the setback at that time, and also that the Applicant was not working within the setback.  
7 Ms. Eaton referred to pictures submitted May 28, 2019 from the Shencavitz' and the Aylen's  
8 that include pictures dated 1965, 1967 and 1985. Ms. Eaton felt the pictures showed intent  
9 to make the area quarry.  
10

11 Ms. Randolph recalled that at the time of the beginning of the ordinance, the Applicant  
12 testified that the area was not being cleared for quarrying. The lichen remained unmarked,  
13 and there was an absence of machinery. The Applicant stated that nothing has occurred in  
14 the area since the 1970s. Ms. Eaton mentioned the fact that the definition states areas  
15 where overburden has been removed. Ms. Randolph felt there had to be context of a  
16 timeline. The whole area was once quarry. If overburden was removed, then who removed  
17 it, and when? Ms. Randolph felt the Board could not use activity that occurred decades ago  
18 as active quarry area.  
19

20 Ms. Eaton noted the pictures show the property lines. The clearing appears to go to the  
21 property line. The Applicant is willing to take 25 feet of that area to create a berm. The  
22 next picture shows some of the trees growing. Does evidence of trees mean the area has  
23 returned to a wild state, and the clearing can no longer be counted? Ms. Eaton compared  
24 the area to a driveway. Plants may encroach here and there, but the intent of the area is  
25 still driveway. She felt the quarry was the same. She referred to the DEP pamphlet on  
26 quarries submitted to the Board and their example of reclamation. Ms. Eaton noted the  
27 reclamation picture in the pamphlet shows added loam and an organized planting of  
28 vegetation. She did not believe the area has been intentionally reclaimed.  
29

30 Ms. Randolph agreed that the area has never had soil added to intentionally reclaim the  
31 site, but she felt it wasn't relevant.  
32

33 Chairman Hanley asked the Applicant to point out on the plan where the active face of the  
34 quarry was. Mr. MacQuinn pointed it out. Chairman Hanley inquired what the tight contour  
35 lines in the upper corner indicated. Mr. MacQuinn noted it was a narrow trough. The 50-  
36 foot setback was pointed out and the granite face. Chairman Hanley referred to the shaded  
37 line on Plan SP1. Chairman Hanley and Mr. MacQuinn followed the line. Chairman Hanley  
38 asked why push into the setback area – why not just stay at the 50-foot setback edge?  
39

40 Mr. MacQuinn stated the granite in that location was the best granite in the quarry. He  
41 intends to go both deeper and spread further horizontally into the allowed area.  
42

43 Ms. Randolph reiterated that removing trees and overburden is not quarrying, but it does  
44 evidence the intent to quarry. The fact that the Applicant has allowed trees and vegetation

1 to grow for at least 20 years, based on the Applicants testimony, seems to indicate that the  
2 Applicant did not have intent to quarry in the area.

3  
4 Attorney Collier repeated his suggestion that a time be chosen as the cutoff date and  
5 determine the quarrying area as of that date. Mr. Collier reiterated that using the effective  
6 date of the Quarrying Licensing Ordinance would be easier to defend in a lawsuit.  
7 Additionally, Article 6.1.D.6 refers to the footprint of the operation as of the effective date  
8 of the Quarrying Licensing Ordinance. Attorney Collier hoped the Applicant would submit a  
9 more elucidating plan, showing the footprint of the operation, including active extraction  
10 area, and all areas with overburden removed. Mr. Collier was unclear of the active  
11 extraction area as of the effective date of the Quarrying Licensing Ordinance. Where the  
12 Applicant quarried, and where the Applicant removed overburden must be included on the  
13 Plan.

14  
15 Attorney Bearor stated the Applicant is showing the extent of the footprint. All the different  
16 areas are not identified, but they are contained within the delineated area on the plan.  
17 Attorney Bearor agreed that as long as the outer extent of the footprint was shown, specific  
18 areas within did not require identification. The map can be color coded to determine the  
19 different activities within the footprint if deemed necessary. Attorney Bearor reminded the  
20 Board that the submissions were deemed complete. Attorney Collier stated that the Board  
21 can require additional materials to help explicate the situation.

22  
23 With respect to overburden and tree growth, Attorney Bearor maintained that a quarry  
24 operator is not necessarily going to cut a tree that's grown, if the area in which it's grown is  
25 not to be imminently quarried. Ms. Randolph noted the trees had been there for twenty  
26 years. Perhaps twenty years of inactivity could be considered an inactive area. Attorney  
27 Bearor disagreed.

28  
29 Attorney Bearor agreed that more detail can be provided if the Board requests it.

30  
31 Attorney Collier asserted that a plan with more detail will help the Board to decide on a  
32 fixed time from which to determine the active quarry area. The Applicant has the burden to  
33 prove where they were operating. Once that area is determined, the setback can be  
34 determined.

35  
36 Chairman Hanley pointed out that the area is delineated on the plan. If the area is on the  
37 plan, and a professional surveyor created that plan, does the Board need to dictate where  
38 the area is going? Attorney Collier agreed that if the Board agrees with the Applicant's plan,  
39 then the delineated edge of the quarry should be clear. If the Board is not in agreement,  
40 then they can restrict the Applicant to the setback distance the Board believes it to be.

41  
42 The effective date of the Quarrying Licensing Ordinance is July 25, 2013. Mr. Ashmore  
43 inquired whether an aerial view of the quarry from 2013 was available. Attorney Bearor  
44 disagreed with the effective date of the Quarry licensing Ordinance. He stated there was a

1 six-month lag because the DEP was required to sign off on the Quarrying Licensing  
2 Ordinance. Attorney Bearor felt the date the Quarrying Licensing Ordinance went into  
3 effect was in December 2013. Attorney Collier agreed with Attorney Bearor's estimate. The  
4 aerial photo presented to the Board was taken some time in 2014. Mr. Ashmore felt a  
5 photo closer to the date of enactment would be beneficial. There were areas on the aerial  
6 photo that he questioned. Some areas appeared to be within 25 feet and others appeared  
7 to be within 50 based on the photo and what he saw at the site visit. The aerial photo being  
8 used for review could be a year out of date and potentially inaccurate.

9  
10 Ms. Leston Clifford stated the date of the aerial photograph she submitted was taken May  
11 16, 2019.

12  
13 Attorney Bearor asked for clarification that Mr. Ashmore is requesting the Applicant find a  
14 dated photograph close in time to the December 2013 adoption of the Quarrying Licensing  
15 Ordinance, and that his concern is that the line on the plan is straighter than what he  
16 perceived it to be at the site, and that a more accurate photo might better delineate where  
17 overburden was or was not removed. Mr. Ashmore concurred. If a photo could be found of  
18 December 2013, and trees are in place in the area in question, then the area should not be  
19 deemed active.

20  
21 Attorney Bearor agreed. Area cleared of overburden won't have trees. Attorney Bearor  
22 asked whether Mr. Ashmore was referring to an outcropping of trees, or whether he was  
23 referring to an edge that appeared to have some trees growing in on it. Mr. Ashmore stated  
24 that he did not believe overburden had been removed in the area he was questioning. In  
25 the area to the west Mr. Ashmore noted activity was apparent.

26  
27 Attorney Collier agreed that a photo from the appropriate time could potentially support  
28 the Applicant's statement.

29  
30 Chairman Hanley asked the Board if they agreed more evidence was needed.

31  
32 Ms. Randolph inquired whether a vote was needed to settle on the date of the Quarrying  
33 Licensing Ordinance adoption as the effective date for determining the footprint of the  
34 quarry site. Chairman Hanley felt that having more information specifically relevant to the  
35 enactment of the ordinance would help determine Section 6.2.F as well. The Board  
36 concurred.

37  
38 Attorney Foster pointed out the black dotted line on a different plan that is intended to  
39 show the active extraction area. Attorney Collier asked if the Applicant would agree that  
40 the black dotted line is not the same area as the blue area defined as the footprint. Ms.  
41 Foster stated the active extraction area and the footprint are two different definitions. The  
42 blue shaded area on the plan is the footprint.

43

1 Chairman Hanley reiterated that it would help the Board have better footing to stand on in  
2 determining Section 6.2.F.2 if an aerial photograph of the area could be found that was as  
3 close to the date the Quarrying Licensing Ordinance was adopted. Mr. MacQuinn noted it  
4 may be impossible to get an aerial from the exact date. He asked if there was an acceptable  
5 date range. Mr. Ashmore hoped something closer than the 2014 dated photo the Board  
6 currently has. Chairman Hanley felt an aerial photo with the plan superimposed offers more  
7 context from which to make a determination.  
8

9 Ms. Randolph maintained that whether the Board would accept overburden removed in the  
10 1970s as part of the active quarry site was critical to the discussion. Ms. Eaton agreed with  
11 Ms. Randolph. Attorney Collier felt the solution was to determine the difference between  
12 the active extraction area and the footprint area. Mr. Collier would like to see the blue  
13 footprint area in plan SP3 and within that footprint, in another color, the area that shows  
14 where the overburden was removed and the extraction area. Ms. Randolph felt that  
15 regardless of the overlay proposed, the question remains whether an area where  
16 overburden was removed in the 1970s constitutes active quarry site. It would be more  
17 informative to determine what the Board will and will not count as active quarry site and  
18 then use the map to determine what that means in relation to quarry setbacks.  
19

20 Attorney Bearor stated that the Quarrying Licensing Ordinance does not indicate when the  
21 overburden needed to be removed. The company that removed that overburden is the  
22 same company that currently owns it. He suggested that when there is ambiguity in an  
23 ordinance, it must be construed in favor of the landowner.  
24

25 Attorney Pileggi pointed out that Harold MacQuinn Inc. did not own the property in the  
26 1970s.  
27

28 Mr. MacQuinn affirmed Harold MacQuinn Inc. was in the quarry, under agreement with the  
29 then-owners.  
30

31 Ms. Leston Clifford noted the debate is about the Applicant wanting to include areas where  
32 overburden was removed from the 1970s and 1980s. If this is so, then does it not follow  
33 that all areas of any activity from the 1970s must be included in the Applicant's quarry size  
34 calculation for the DEP.  
35

36 Mr. Ashmore reiterated that the active extraction area was going to be deemed what was  
37 being worked on the date of the adoption of the Quarrying Licensing Ordinance. He opined  
38 that if there were trees in place at that time, then it was not being worked. The Board  
39 would look at the site as of the effective date. Attorney Collier disagreed: if the Board goes  
40 with the effective date of the Quarrying Licensing Ordinance, then it must include anything  
41 ever done up to that date. Ms. Randolph argued that if, as of December 2013, land had  
42 been cleared it is deemed active, but if trees are growing on the land at that time it cannot  
43 be construed as active, regardless of what happened there years ago. Mr. Ashmore agreed  
44 with Ms. Randolph.

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Ms. Eaton suggested reviewing what the Board is requesting for the next meeting and set a meeting date and time.

Ms. Randolph suggested agreeing on a definition.

Chairman Hanley asked for final comments for the night.

Abutter Judy Ayles did not understand how, if the Applicant did not own the property at the time trees were removed, they have the right to claim they removed the materials and have the right to quarry. Attorney Collier felt the question should be discussed at the next meeting.

Chairman Hanley asked for an aerial photo from the effective date of the Quarrying Licensing Ordinance, with a plan overlaid. The Board agreed. Attorney Bearor reiterated Mr. Hanley's request to find an aerial photo as close to the effective date of the Quarrying Licensing Ordinance. He noted that at that time the Quarrying Licensing Ordinance went into effect, a moratorium was in place and nothing was happening on the site. Mr. Bearor agreed to find an aerial photo as close to the effective date as they could find, and they would verify their search by recording their efforts in finding such a photograph.

Chairman Hanley requested the plan with the Applicant's interpretation of what the active quarry area consists of overlaid onto the photo. Attorney Collier hoped the plan would show where cutting occurred and where the area where overburden was removed was. Attorney Collier hoped for a two-color overlay, the two colors representing the active cutting area and the area where the overburden was removed.

The Board clarified they wanted the aerial photo with the SP1 plan provided by the Applicant overlaid on it.

Attorney Collier suggested the Board determine a submission date requirement.

Attorney Bearor added that the Applicant would plot the line of the quarry edge, in answer to Mr. Ashmore's earlier concern.

Chairman Hanley noted July 17<sup>th</sup>, 2019 was a meeting date already scheduled for review of noise. He suggested meeting July 17<sup>th</sup>, with a submittal deadline July 3, 2019 - two weeks prior to July 17 – and deferring the issue of noise to a future date. July 10, 2019 would be the deadline for submittal of any opposing materials.

Attorney Collier assured Ms. Ayles that her question would be answered in future discussion, and it was not the Board's intent to ignore her concerns.



1 Ms. Aylen thanked the new Planning Board Members for their work. Chairman Hanley  
2 lauded the new Board Member's efforts as well.

3  
4 MR. ASHMORE MOVED, WITH MS. EATON SECONDING, TO CONTINUE THE MEETING TO  
5 JULY 17, 2019, 6:00PM. MOTION APPROVED 5-0.

6  
7 The meeting ended at 9:40PM.

8  
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